

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COUNCIL OF THE CITY OF SAINT PAUL

In the Matter of All Licenses Held by Jonah
Ogiamien d/b/a Jonah Ogiamien.

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION**

This matter came on for hearing on November 2, 2011, before Administrative Law Judge Sangeeta Jain, in Room 220 of the County Commissioner's Office, 15 West Kellogg Boulevard, St. Paul, MN 55102.

Kyle Lundgren, Assistant City Attorney, appeared for the City of St. Paul's Department of Safety and Inspections (DSI).

Jonah Ogiamien appeared on his own behalf and without counsel (Licensee).

STATEMENT OF THE ISSUES

1. On July 2, 2011, did the Licensee violate the St. Paul Legislative Code by allowing an underage individual to be present on the premises, selling alcohol on the premises, and creating a serious danger to the public health, safety or welfare?

2. If so, is a \$1,000.00 matrix penalty with additional imposed license conditions the appropriate licensing sanctions?

3. On August 19, 2011, did the Licensee violate the St. Paul Legislative Code by selling alcohol on the premises?

4. If so, is a \$1,000.00 matrix penalty the appropriate licensing sanction?

Based upon the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Jonah Ogiamien, doing business as Jonah Ogiamien, is the owner and holder of a Dance Hall License and a Rental Hall License, license number

19990005112. The license is for a hall located at 508 Snelling Avenue North in Saint Paul, Minnesota. Mr. Ogiamien holds the license for said premises since 1994.¹

2. The Licensee does not hold a liquor license.²

3. The Licensee's hall's entrance faces Snelling Avenue and is located on the West side of the premises on the second floor. There are steps on the building's exterior to reach the entrance. The dance floor is on the second floor. There are two windows facing the road on the second floor of the hall. The Licensee's hall is near residential property.³

EVENTS OF JULY 2, 2011

4. On July 2, 2011, Officer Amber Larson was patrolling near the Licensee's hall and could hear noise as well as see many individuals at the hall. A security officer, Troy Nadeau, was hired for the hall that night. At about 1:45 a.m., Officer Larson saw two people fighting with the security officer outside of the Licensee's hall. Two inebriated females were placed inside the rear of Officer Larson's squad car.⁴

5. Officer Larson observed over one hundred people leaving the Licensee's hall. Many individuals were throwing plastic cups, using vulgar language, and behaving aggressively. Officer Larson went inside the Licensee's hall. She smelt burned marijuana when she entered and found empty plastic cups and beer cans strewn inside the Licensee's hall. As Officer Larson walked towards the rear of the hall, she saw the Licensee. The Licensee, in Officer Larson's presence, removed a plaster tag board off the front of a makeshift bar area and hid it near the DJ booth. Officer Larson looked at the tag board and found that it was a drink menu written in black magic marker that had previously been taped up in a position where individuals could easily see it. The security officer told Officer Nadeau that the Licensee was present the entire evening during the event hosted at the hall.⁵

6. Officer Larson spoke with Tanazia Morehead, who claimed to be the cashier at the front door. Ms. Morehead indicated that the entry price was \$5 and that she checked identification of every individual that entered the Licensee's hall. Officer Larson spoke to Kadie Risland, the female seated in the rear of her squad car. Ms. Risland indicated that she attended the party at the Licensee's hall with four other females, including a 17-year-old female. Ms. Risland said that their identification was not reviewed when they paid the entry fee and entered the facility. Ms. Risland indicated that their identification was not checked at any time while the five females were at the Licensee's hall that night. Ms. Risland said that she was served alcohol at the Licensee's hall that night. Officer Larson then spoke to a 17-year-old female who accompanied Ms. Risland into the Licensee's hall. The minor had a strong odor of

¹ Ex. A12-1.

² Test. of the Licensee, and Officers Larson, Higgins, McDonald, and Roettjer.

³ Test. of Officers Larson, Ex. A4.

⁴ Test. of Officer Amber Larson, Ex. A4.

⁵ Test. of Officer Amber Larson, Ex. A4.

alcohol and blew a .232 pursuant to a breathalyzer test. The minor indicated that she was inside the Licensee's hall and drank alcohol there. The minor's guardian and parents were not present that night. The minor did not possess a written consent from her parents or guardian to enter the hall.⁶

7. Officer Larson took many pictures inside the Licensee's hall. There was an empty cash drawer, plastic tubs with melted ice and empty wine bottles, trash can with empty alcohol bottles, drink menu, tip glass, empty boxes that appeared to have previously held liquor bottles, and wine opener.⁷ Officer Larson also took a picture of the Licensee.⁸

8. Officer Joseph Higgins arrived at the Licensee's hall on July 2, 2011 at about 1:53 a.m. in response to Officer Larson's call. He observed that there were at least six squad cars present. He broke apart a second fight and dispersed the crowd leaving from the Licensee's hall. Officer Higgins found a makeshift bar with Rubbermaid containers containing ice. There were empty beer cans and shot glasses. Officer Higgins saw the Licensee inside the hall. Officer Higgins saw the Licensee remove a tag board and hide it behind some speakers. The tag board was a drink menu titled "Drink Specials." The menu contained a list of drinks available at specific prices, such as the following: \$7 for Grey Goose, 1800, Patron, Tanqueray, Hennessy; \$5 for Absolut, Svedka, Bacardi Limon, Amsterdam, Karkov, Jose Cuervo, E&J, Durango, Muscato; and \$15 for a bottle of champagne.⁹

9. Officer Darin T. McDonald was also called to the Licensee's hall on July 2, 2011. Officer McDonald saw many individuals leaving the Licensee's hall. He helped disperse the crowd and assisted in breaking the fights involving individuals exiting the Licensee's hall. He also saw a makeshift bar area containing tubs of ice, beer, and glass alcohol bottles.¹⁰

10. Officer Kurt Roettjer was also present at the Licensee's hall on July 2, 2011. Officer Roettjer saw the makeshift bar and saw an individual trying to clean up and dumping out alcohol bottles. Officer Roettjer saw the Licensee remove the tag board from the bar area and place it in a concealed area.¹¹

EVENTS OF AUGUST 19, 2011 AND AUGUST 20, 2011¹²

11. On the night of August 19, 2011 and early morning of August 20, 2011, Officer Larson was within the vicinity of the Licensee's hall. Near midnight, she heard loud music coming from the hall and contacted the hall's security officer. The music

⁶ Test. of Officer Amber Larson, Ex. A4.

⁷ Test. of Officer Larson, Exs. A8-1 through A8-34.

⁸ Test. of Officer Larson, Ex. A8-26.

⁹ Test. of Officer Higgins, Exs. A6, and A8-27.

¹⁰ Test. of Officer McDonald.

¹¹ Test. of Officer Roettjer, Ex. A5.

¹² The incident occurred in the late night hours of August 19th and early morning of August 20th. The City cited the incident as occurring on August 19th. Any reference to the morning of August 20th refers to the cited violation for August 19th.

could be heard at least 1.5 blocks away from the Licensee's hall coming from the hall. The security officer indicated that alcohol was being served inside the Licensee's hall. A decision was made to shut down the party. Officer Larson went inside the Licensee's hall. She saw alcohol being served from the same location as the makeshift bar seen on July 2, 2011. There were over one hundred people in the Licensee's dance hall. Officer Larson saw the Licensee inside the hall and saw him enter his office located within the hall shutting the office door behind him. Officer Larson shut down the music and escorted the crowd out. Ten to twelve police officers were present at this time. Officer Larson took pictures inside the hall including photographs of numerous alcohol bottles, tip jar, wine opener, bar area, numerous beer cans, trashcan containing empty bottles of alcohol, and plastic drinking cups.¹³

12. Officer Higgins was directed to go to the same site on the night of August 19, 2011 to shut the party down because there was reason to believe that alcohol was being served at the Licensee's hall. Officer Higgins saw about 150 people in the Licensee's hall. Officer Higgins also saw the makeshift bar with numerous fully or partially-filled bottles of alcohol.¹⁴

13. On the early morning of August 20, 2011, Officer McDonald was present outside the Licensee's hall and could hear very loud music emanating from the hall. The security officer told Officer McDonald that alcoholic beverages were being served inside the Licensee's hall with a cash bar. Officer McDonald was aware that the Licensee did not possess a liquor license for the hall. He contacted Sergeant Jim Gray and then entered the facility. He smelled a strong smell of marijuana and saw alcohol being served. Individuals were holding beer cans and plastic cups with alcohol. The bartender, Eileen Cobb, was actively serving alcohol at the makeshift bar area. Officer McDonald saw Ms. Cobb serving alcoholic beverages and exchanging drinks for cash. There were a wide variety of alcoholic beverages such as gin, vodka, whisky, and tequila. The bartender agreed that she did not have a liquor license but stated that the owner of the hall told her that he had a permit to sell alcohol. The room was filled with individuals with very little room to move. Officer McDonald estimated that there were in excess of 200 people and agreed that he did not physically count the number of individuals. Officer McDonald with other officers took custody of the alcoholic containers and poured the alcohol down the sink.¹⁵

14. Sergeant Gray was also present at the Licensee's hall on August 20, 2011 pursuant to Officer McDonald's phone call. He saw the sale of alcohol occurring inside the Licensee's hall. People were standing in line in front of a bar area with cash in their hand waiting to purchase varied beverages. Sergeant Gray smelled the odor of burnt marijuana. Sergeant Gray talked to the bartender, Ms. Cobb. Ms. Cobb agreed that she was selling alcohol. Ms. Cobb indicated that she had the Licensee's permission to sell alcohol and that the Licensee told her that he was licensed to sell alcohol. Sergeant

¹³ Test. of Officer Larson, Ex. B5.

¹⁴ Test. of Officer Higgins.

¹⁵ Test. of Officer McDonald, Ex. B4.

Gray then knocked on the Licensee's office door to speak with the Licensee. The Licensee denied knowing that alcohol was being served at his property.¹⁶

15. Officer Roettjer was also present at the Licensee's hall on the night of August 19, 2011 and the early morning of August 20, 2011. He saw the makeshift bar and the containers containing alcohol.¹⁷

16. The Licensee was also cited for similar concerns due to a loud party with alcohol that occurred on June 29, 2008. Pursuant to a settlement, the Licensee admitted the violation and agreed to pay \$500 matrix penalty with conditions placed on his license as follows:

- a. Hours of operation will be until 12:00 midnight Sunday through Thursday and until 2:00 a.m. Friday and Saturday...
- b. In addition to the other employees, at least one uniformed security person shall be present at all functions taking place at the hall...
- c. Doors and windows will remain closed during rental hall events to minimize noise.
- d. Licensee shall not allow more than 155 people in the rental at one time.¹⁸

17. The Licensee agreed that he was notified in 2009 by DSI that he could not sell alcohol on his premises. The Licensee claims that the officers fabricated the two incidents in order to punish him for hosting the "Milkman", a performer. The Licensee further claims that the officers acted out of racial hostility arising out of their dislike for Black Americans. The Licensee avers that he did not have any knowledge that liquor was being sold on his premises and if in fact it was served that it was due to a third party act which absolves him of any wrongdoing. The Licensee agreed that he removed the sign at the bar, the bar menu, on July 2, 2011 but denied trying to hide the sign. The Licensee agrees that he was present for some time period during both incidents but not the entire time period that the hall was rented. The Licensee agrees that during both nights, his hall was rented out.¹⁹

18. On September 2, 2011, the Licensee was notified regarding a violation arising out of the July 2, 2011 incident. The Licensee was also notified that the licensing office will recommend a \$1,000 matrix penalty and the following license conditions:

- a. Licensee shall close by 12 midnight every night.

¹⁶ Test. of Sergeant Gray, Ex. B6.

¹⁷ Test. of Officer Roettjer.

¹⁸ Test. of Christine Rozek and Exs. A2, and A16-1.

¹⁹ Test. of the Licensee.

- b. Alcohol will not be sold at the establishment.
- c. Rental shall be for private parties only. Public dances are not permitted at this location.²⁰

19. On September 13, 2011, the Licensee was notified regarding a violation arising out of the August 19, 2011 incident. The Licensee was also notified that the licensing office will recommend a \$1,000 matrix penalty.²¹

20. The Licensee requested a hearing regarding both incidents by a letter dated October 4, 2011.²²

21. On October 19, 2011, the City issued a Notice of Administrative Hearing.²³

Based upon these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the St. Paul City Council have authority to hear this matter pursuant to St. Paul Legislative Code § 310.05(c).

2. The Licensee received timely and proper notice of the hearing, and the City has complied with all relevant substantive and procedural requirements of statute and rule.²⁴

3. The hearing in this matter was conducted in accordance with the applicable portions of the procedures set forth in § 310.05 of the St. Paul Legislative Code.

4. The City has the burden of proving by a preponderance of the evidence that adverse action is warranted against the licenses held by Jonah Ogiamien d/b/a Jonah Ogiamien.

5. The City has authority to deny, suspend, or revoke a license and to impose penalties for the violation of applicable statutes and rules.²⁵

6. The presumptive penalty for the first violation is a \$500 fine and \$1,000 for the second violation. A deviation may occur where the council determines that

²⁰ Ex. A10.

²¹ Ex. B7.

²² Ex. A-11.

²³ Exs. A12, B9.

²⁴ See Minn. Stat. §§ 14.57 – 14.61; Saint Paul Legislative Code §§ 310.05; 310.06.

²⁵ St. Paul Legislative Code § 310.06.

substantial and compelling reasons exist to do so. In case of a deviation, written reasons are required that specify why the penalty was selected.²⁶

7. The July 2, 2011 incident is considered a first time violation since the 2008 incident occurred greater than twelve months ago.²⁷

8. Rental or dance hall licenses do not include the right to sell intoxicating liquor at a public dance.²⁸

9. A license is needed to sell intoxicating liquor for consumption at any time or place in Saint Paul.²⁹

10. A rental or dance hall licensee is required to restrict entry to individuals more than sixteen and under the age of eighteen years unless that individual is accompanied by a parent or guardian or presents the written consent of said parent or guardian.³⁰

11. The City demonstrated by a preponderance of the evidence that in the late night hours of July 2, 2011, the Licensee permitted a 17-year-old female to enter his premises and to consume alcohol on the premises. The City demonstrated by a preponderance of the evidence that the 17-year-old female was not accompanied by her parent or guardian and did not possess a written consent from her parent or guardian. The City demonstrated by a preponderance of the evidence that the Licensee's actions constitute a violation of § 405.04 of the St. Paul Legislative Code.

12. The City also demonstrated by a preponderance of the evidence that sale of alcohol occurred on the Licensee's premises while the Licensee was present on July 2, 2011 and on August 19, 2011 in violation of § 405.04 of the St. Paul Legislative Code.

13. The City also demonstrated by a preponderance of the evidence that the actions of the Licensee on July 2, 2011 and August 19, 2011 created a serious danger to the public health, safety or welfare in violation of § 310.06 (b) (7) warranting an adverse action against his license.

14. The City established by a preponderance of the evidence that there are substantial and compelling reasons to deviate upward from the presumptive matrix penalty of \$500 to \$1,000 for the July 2, 2011 incident in light of the easy access to alcohol provided to a minor that led to her extreme intoxication, the open sale of alcoholic beverages to individuals that led to numerous fights occurring outside the establishment during the late hours of the night, and the conduct of the Licensee

²⁶ St. Paul Legislative Code § 310.05(m).

²⁷ St. Paul Legislative Code § 310.05(m).

²⁸ St. Paul Legislative Code § 405.04.

²⁹ St. Paul Legislative Code § 409.01.

³⁰ St. Paul Legislative Code § 405.04.

including an attempt to hide evidence regarding the alcoholic sale as well as allowing the sale to occur during his presence.

15. The City established by a preponderance of the evidence warranting adverse action pursuant to § 310.06 of the St. Paul Legislative Code in the form of the following license conditions: 1. Licensee shall close by 12 midnight every night; 2. Alcohol will not be sold at the establishment; and 3. Rental shall be for private parties only. Public dances are not permitted at this location.

16. The City also demonstrated by a preponderance of the evidence that the sale of alcohol on August 19, 2011 was a violation of § 405.04 of the St. Paul Legislative Code warranting a penalty of \$1,000 based upon the penalty matrix since this was a second incident within a twelve month period.

Based upon these Conclusions, and for the reasons explained in the Memorandum attached hereto, the Administrative Law Judge makes the following:

RECOMMENDATION

It is respectfully recommended that the St. Paul City Council take adverse action against the licenses held by Jonah Ogiamien d/b/a Jonah Ogiamien.

The proposed \$1,000 penalty with the three license conditions referenced by the Licensing Officer in the September 2, 2011 *Notice of Violation* is warranted for the July 2, 2011 incident. The additional proposed \$1,000 penalty referenced by the Licensing Officer in the September 13, 2011 *Notice of Violation* is warranted for the August 19, 2011 incident.

Dated: December 1, 2011.

/s/ Sangeeta Jain

SANGEETA JAIN
Administrative Law Judge

Reported: Digitally recorded,
No transcript prepared

NOTICE

This report is a recommendation, not a final decision. The Saint Paul City Council will make a final decision after a review of the record and may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendation.³¹ Pursuant to Saint Paul Legislative Code § 310.05 (c-1), the City Council shall not make a final decision until the parties have had the opportunity to present oral or written arguments to the City Council. Parties should contact Shari Moore, City Clerk, City of Saint Paul, 170 City Hall, 15 W. Kellogg Blvd., Saint Paul, Minnesota 55102, to ascertain the procedure for filing exceptions or presenting arguments.

MEMORANDUM

The Licensee asserts that the Officers fabricated both incidents in order to retaliate against the performer, Milkman, and acted out of their prejudice against Black Americans. The Licensee failed to establish that the sale of liquor was not occurring on July 2, 2011 or on August 19, 2011. The Licensee was present during both incidents and was seen by the officers inside the hall where the sale of liquor was occurring. The Licensee agrees that on July 2, 2011, he picked up the tag board containing the drink menu and placed it elsewhere. The officers' testimony is consistent and credible regarding both incidents. There is no showing of malice or subsequent subterfuge by the officers. The pictures taken during both incidents and the testimony of the Licensee corroborate the officers' testimony.

The Licensee next asserts that a violation was pursued against him even though other nearby establishments act in a similar manner. The Licensee failed to establish that other establishments acted similarly or that such misconduct is a defense to his sale of alcohol or failure to properly exclude minors from his facility.

The Licensee also asserts that he should not be penalized because he did not specifically know that the sale of alcohol was occurring at the hall during both incidents. The Licensee is not credible in asserting a lack of knowledge when he was present at the hall during both incidents and was seen inside the hall where the sale of alcohol was occurring. The Licensee was also seen hiding evidence of said sale at the first incident. In addition, the Licensee failed to establish that a subjective knowledge is a requisite for a violation to be determined.

The City established through a preponderance of the evidence that the Licensee allowed the sale of alcohol and the entry of a minor into his establishment on July 2, 2011 and thus the Licensee violated the St. Paul Legislative Code § 405.04. The City established that it's proposed license conditions and the upward deviation of the matrix fine to \$1,000 is warranted for the July 2, 2011 incident. A 17-year-old was allowed to enter the Licensee's hall and was provided alcohol that led to her extreme inebriation, a

³¹ Saint Paul Legislative Code §§ 310.05 (c-1).

.232 reading from a breathalyzer test. The Licensee was present while this sale of alcohol occurred and attempted to hide evidence of the sale. Many fights broke out during the late night outside the establishment. The Licensee was notified unequivocally that the sale of alcohol was not allowed after his 2008 violation and continued to knowingly sell alcohol. His actions created a serious danger to the public health, safety, and welfare warranting the City's proposed actions regarding the July 2, 2011 incident.

The City established through a preponderance of the evidence that the Licensee allowed the sale of alcohol on August 19, 2011 and thus the Licensee violated the St. Paul Legislative Code § 405.04. The City established that its proposed penalty of \$1,000 in accordance with the penalty matrix is also warranted regarding the August 19, 2011 incident. The Licensee's actions created a serious danger to the public health, safety, and welfare warranting the City's proposed actions regarding the August 19, 2011 incident.

S. J.